

## ENGAGEMENT CONTRACT

### **Audit Services to be Provided to the Michigan Office of the Auditor General for the Michigan State Housing Development Authority**

This engagement contract is entered into by the State of Michigan, the Office of the Auditor General; the Michigan State Housing Development Authority (the Authority); and Plante Moran, PLLC, hereinafter referred to as the contractor:

1. **SERVICES.** The contractor shall perform a financial audit of the Authority for the fiscal year ending June 30, 2015. The contractor shall also perform the single audit of the Authority in accordance with the Single Audit Act Amendments of 1996 (Public Law 104-156), as amended, for the fiscal year ending June 30, 2015. The audit covering the additional requirements of the Single Audit Act Amendments of 1996 will be distinct from the financial audit of the Authority and the resulting report will be issued separately.

The contractor shall also perform other services as needed, related to bond offerings and other non-audit services, from the date of issuance of the financial statements for the fiscal year ended June 30, 2014 until the issuance of the financial statements for the fiscal year ending June 30, 2016.

All services shall be performed in accordance with the Auditor General's original request for proposal (RFP), the contractor's original engagement proposal dated January 31, 2012, the contractor's renewal proposal dated May 29, 2015 and the provisions of this contract.

2. **TIME REQUIREMENTS FOR STARTING THE AUDITS.** The financial audit of the Authority for the fiscal year ending June 30, 2015 should commence as soon as possible after the Authority makes its records available. The Authority's unaudited financial statements are expected to be substantially complete by September 15, 2015. With the consent of the Authority, the contractor may begin preliminary audit procedures prior to the completion of the unaudited financial statements. The single audit of the Authority for the fiscal year ending June 30, 2015 shall commence as soon as possible after the Authority makes its records available.
3. **GROUP AUDIT.** The Auditor General is the principal auditor of both the *State of Michigan Comprehensive Annual Financial Report (SOMCAFR)* and the State of Michigan Single Audit. As the principal auditor, the Auditor General intends to rely on your independent auditor's reports on the entity's financial statements, applicable crosswalks, and supplemental information and on the entity's federal program compliance for the selected major programs.

In conjunction with the financial audit of the *SOMCAFR*, the contractor shall perform a review of subsequent events related to the entity, from the date of your independent auditor's report on the financial statements and applicable crosswalks through a date to be determined in conjunction with the release of the *SOMCAFR*. The contractor will respond to the Auditor General within one week regarding the results of the contractor's subsequent events review, including any matters which would require disclosure in, or modifications to, the entity's financial statements or crosswalks.

In addition, the contractor shall provide a representation that they are independent, performs all professional responsibilities with integrity, objectivity, and due professional care in their capacity as auditor of the entity under the requirements of the American Institute of Certified Public Accountants (AICPA), and that the contractor is aware that the Auditor General will be relying on the contractor's independent auditor's reports on the entity's financial statements, applicable crosswalks, and supplementary information and on the entity's federal program compliance for the selected major programs.

4. **AUDIT AND REPORTING REQUIREMENTS - FINANCIAL AUDITS.** The financial audit of the Authority for the fiscal year ending June 30, 2015 shall be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and shall result in the following:

- a. An independent auditor's report on the Authority's basic financial statements and crosswalks, including supplemental information, prepared based upon accounting principles generally accepted in the United States of America.
- b. An independent auditor's report on the Authority's internal control over financial reporting and on compliance and other matters based on an audit of the Authority's financial statements performed in accordance with *Government Auditing Standards*.
- c. A management letter identifying all significant deficiencies and other relevant information about the internal controls and operations of the Authority.

The financial statement report letters described in "a." and "b." above shall be issued together in one document.

Implementation of changes in accounting principles or their application to entities of the State must be coordinated with the Auditor General and the Office of Financial Management (OFM), Department of Technology,

Management, and Budget (DTMB). The contractor will be responsible for consultation with the Authority, the Auditor General, and OFM regarding the implementation of any recently issued or changes to accounting and financial reporting standards.

The contractor shall be subject to the independence and continuing education requirements provided for in *Government Auditing Standards*.

5. **AUDIT AND REPORTING REQUIREMENTS - SINGLE AUDIT.** The single audit of the Authority for the fiscal year ending June 30, 2015 shall be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. In addition, the audit shall be performed in accordance with the Single Audit Act Amendments of 1996, applicable OMB Circulars and Compliance Supplements, and applicable audit guides issued by the AICPA and the U.S. Department of Housing and Urban Development.

The contractor and the OAG Single Audit Coordinator will reach an agreement during the planning stage of the single audit regarding the identification and inclusion of applicable major federal programs in the single audit necessary to provide appropriate federal program coverage for the statewide single audit for the State of Michigan.

The single audit report for the Authority for the fiscal year ending June 30, 2015 shall be issued separately from the reports described in item 4 of this contract and shall include, at a minimum:

- a. An opinion as to whether the Authority's Schedule of Expenditures of Federal Awards is presented fairly in all material respects in relation to the Authority's basic financial statements taken as a whole.
- b. An independent auditor's report on the Authority's internal control over financial reporting and on compliance and other matters based on an audit of the Authority's financial statements performed in accordance with *Government Auditing Standards*.
- c. A report on the Authority's compliance with requirements that could have a direct and material effect on each major federal program and on its internal control over compliance.
- d. A schedule of expenditures of federal awards, and any associated notes to the schedule.
- e. A schedule of findings and questioned costs.

- f. A summary schedule of prior audit findings.
- g. A corrective action plan.
- h. The contractor's audit report should contain the necessary elements to serve as the Authority's reporting package. The completion of the OMB Data Collection Form and electronic submission of the reporting package and OMB Data Collection Form is the joint responsibility of the contractor, the OAG, and the Authority.
- i. The contractor will provide the OAG Single Audit Coordinator with the secure transmission of an unsecured .pdf of the Single Audit report for submission to the federal audit clearinghouse as a part of State of Michigan's reporting package.

**6. REVIEW PROCEDURES AND REPORTING REQUIREMENTS RELATED TO BOND OFFERINGS.** In connection with periodic bond offerings issued by the Authority during the time period set forth in Item 1 of this contract, the contractor shall perform limited review procedures and issue letters ("comfort letters") for the bond underwriters regarding the results of such reviews.

The Authority anticipates that approximately 3 bond offerings will be issued each fiscal year. Approximately 2 bond offerings each year will require a review of interim financial statements for the "stub period," in addition to the letter for the underwriters and other procedures specified by the underwriters. For bond offerings occurring near the Authority's fiscal year end, the review procedures and letter for the underwriters would be prepared in relation to the Authority's audited financial statements.

The report letter issued as a result of the limited review procedures shall be in accordance with applicable standards issued by the AICPA.

**7. OTHER NON-AUDIT SERVICES.** Additional non-audit services, as requested by the Authority, may include, but are not limited to:

- Cost Certification Guide - advising on the preparation and review of this guide.
- Availability for questions related to other tax credit items.
- Agreed-upon procedures related to project valuations and adherence to IRS regulations.

These services have not yet been formally evaluated by the contractor as to the estimated additional fees; however, all estimated fees will be discussed before proceeding.

8. **DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET REQUIREMENTS.** OFM has established the following requirements for audit contractors for the process of including the Authority's June 30, 2015 financial statements in the *SOMCAFR*:

- a. Request OFM and Auditor General representation at the entrance and exit meetings with the Authority.
- b. DTMB Financial Management Guide Part II, Chapter 24, Section 400 requires that separately issued agency level financial statements be consistent in format and major classification amounts with corresponding reporting in the *SOMCAFR*. If the Authority's financial statements for the fiscal year ending June 30, 2015 do not comply with the Financial Management Guide procedures, it will be necessary for the contractor to audit "crosswalks" prepared by the Authority and to issue an independent auditor's report thereon in conformance with applicable standards issued by the AICPA.
- c. Review footnote information provided to OFM by the Authority for inclusion in the *SOMCAFR*.
- d. Verify the Authority obtained OFM's approval of material accounting changes or major new accounting treatments prior to issuance of the audited financial statements or audited crosswalks.
- e. Provide the Auditor General, the Authority, and OFM designee with drafts of the audited financial statements and audited crosswalks **prior** to their issuance.
- f. Provide the Auditor General and the Authority drafts of the management letter **prior** to its issuance.

OFM will provide the Authority with the following:

- a. Blank financial statement drafts in *SOMCAFR* format.
- b. Blank footnote drafts related to the Authority.
- c. A listing of MAIN account numbers to be reconciled with the Authority's accounting records.

Any questions regarding *SOMCAFR* reporting requirements should be directed to Mr. [REDACTED], Manager, OFM Financial Reporting Section, at [REDACTED]

**9. TIME REQUIREMENTS FOR SUBMITTING THE REPORTS - FINANCIAL AUDITS.**

The preliminary drafts of the Authority's audited financial statements, with accompanying independent auditor's reports, audited crosswalks, and management letter, shall be submitted to the Office of the Auditor General and the Authority by October 11, 2015. The final audited financial statements, audited crosswalks, and management letter must be completed and delivered by October 25, 2015 to meet bond requirements.

If requested, the contractor will discuss preliminary drafts with representatives of the Authority, OFM, and the Auditor General. Any other special reports should follow the same procedure.

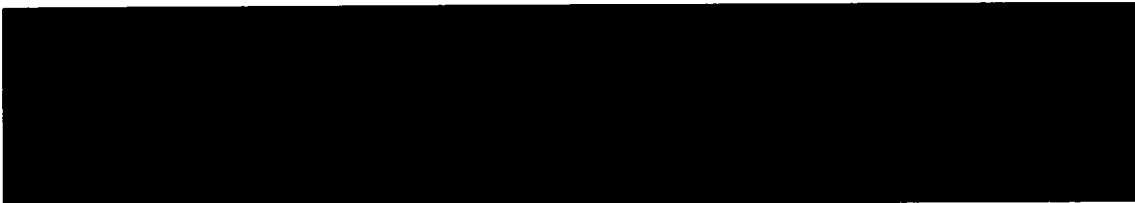
**SINGLE AUDITS.** OMB Circular A-133 requires single audit reports to be submitted to the cognizant agency no later than nine months after the end of the audit period. The preliminary and final single audit reports for the fiscal year ending June 30, 2015 shall be submitted to the Auditor General and the Authority by February 29, 2016 and March 14, 2016, respectively.

**10. NUMBER OF REPORT COPIES.** For the 2015 financial audit of the Authority, the contractor shall provide the following:

**To the Auditor General, OFM, and the Agency - electronic .PDF files of:**

- Draft and final audited financial statements and accompanying independent auditor's reports.
- Draft and final audited crosswalks and accompanying independent auditor's reports.
- Draft and final management letter.
- Draft and final single audit reports.

**E-mail addresses:**



**To the Agency – in hard copy format**

- Twenty copies of the final audited financial statements and accompanying independent auditor's reports.
- Five copies of the final management letter.
- Fifteen copies of the final single audit reports

The Authority's address is: 735 E. Michigan Ave., P.O. Box 30044, Lansing, MI 48909.

The independent auditor's reports and management letters for the financial audits of the Funds, as well as the single audit reports, are to be addressed jointly to the Auditor General and the Agency.

11. **AUDIT PROGRAMS.** The contractor may be required to submit audit programs, including sampling plans, to the Office of the Auditor General. The Auditor General may review the programs for appropriateness.
12. **AUDITOR'S COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE.** If the requirements of SAS 114 are met through written communication, the contractor shall provide the Office of the Auditor General with a copy of the written communication. If the requirements of SAS 114 are met through verbal communication, a representative of the Office of the Auditor General is to be present at the meeting.
13. **WORKING PAPERS.** Audit working papers, including time records, planning documents, and other documentation (such as the determination of materiality levels and the summary evaluations of errors), must be retained for at least five years from the date of the independent auditor's reports and shall be available for examination by the Auditor General.
14. **PROGRESS MEETINGS.** Progress meetings shall be held with representatives of the Authority and the Auditor General as considered necessary.
15. **MINORITY- AND WOMEN-OWNED AND OPERATED ACCOUNTING FIRMS AND ACCOUNTING FIRMS OWNED BY PERSONS WITH DISABILITIES.** If requested, the contractor shall provide the Auditor General with evidence of participation in the engagement by certified minority- and women-owned and operated accounting firms, and accounting firms owned and operated by persons with disabilities, as set forth in the contractor's proposal.
16. **AMENDMENT.** The scope of the work to be undertaken pursuant to this contract and the maximum price payable per Item 19 may be altered only by a written amendment signed by the Auditor General, the Authority, and the contractor.
17. **PRIVATE CONTRACTOR RESPONSIBILITIES.** The contractor is required to assume responsibility for all services performed under this contract whether or not it produces them.
18. **APPROVAL OF STAFFING CHANGES.** Any changes in the supervisory team assigned to the engagement shall require the approval of the Auditor General.

**19. CONTRACT PAYMENT SCHEDULE - FINANCIAL AND SINGLE AUDITS.**

Contract price shall be based on actual hours expended on the engagements and shall not exceed \$134,415 for the 2015 financial audit and \$52,015 for the Authority's 2015 single audit, including expenses. The financial audit contract price includes one-time costs related to the adoption of GASB 68 that will not exceed \$3,800. For the single audit, this contract price assumes no more than the 5 typical major programs. If major programs exceed the typical 5, the fee will increase by \$4,000 per program in excess of 5 major programs. All progress billings and the final billing by the contractor for these services **shall be forwarded directly to the Authority for payment, with a copy to the Auditor General**, and shall be made using the following hourly rates: partner - \$187; manager - \$144; in-charge \$118; and assistants - \$95.

Payments to the contractor will be made periodically upon approval of such billings by the Authority. Periodic payments for progress billings shall be 90% of the billing, with the remaining 10% to be paid upon receipt of the independent auditor's reports and management letter by the Auditor General and the Authority (for each financial audit) and receipt of the single audit report (for the Authority's single audit). **The Auditor General will approve the final billing for payment and authorize release of amounts held back from previous billings when all terms of the engagement contract have been met.** Payment of the final billing for each audit will also be subject to reporting by the contractor to the Auditor General of the actual audit hours, itemized by level of employee (including partners), and, if applicable, payments made by the contractor to subcontractors.

The total amount paid shall be the lesser of actual audit effort at stated billing rates or the total contract amount applicable to the specific audit. **This maximum price will only be exceeded with the written consent of both the Auditor General and the Authority, in the event that extreme and unanticipated circumstances affect the scope of the engagement.**

**CONTRACT PAYMENT SCHEDULE - SERVICES RELATED TO BOND OFFERINGS AND OTHER NON-AUDIT SERVICES.** For those services related to new bond offerings as set forth in Item 6, and other non-audit services as set forth in Item 7, provided by the contractor from the date of issuance of the financial statements for the fiscal year ended June 30, 2014 until the issuance of the financial statements for the fiscal year ending June 30, 2016, the fee will be based on an estimate of the hours required to complete the assignment at various hourly rates from \$95 to \$187.

Billings by the contractor for these services **shall be forwarded directly to the Authority.** Payment for these services will be made by the Authority upon receipt of the final review report letter for each new bond offering. The total amount paid in each instance these services are provided shall be based on the actual hours expended on the engagement at stated billing rates.



20. **CONTRACT ADMINISTRATION FEES.** The Auditor General will bill the Authority for costs associated with administering this contract. The billing for services will be based upon annualized direct costs, not to exceed 15 percent of the contract price. The billing will be forwarded to the Authority along with approval of the contractor's final billing for the audit services in the spring of 2016.
21. **INCURRING COSTS.** Neither the State of Michigan nor the Authority is liable for any cost incurred by the contractor prior to the issuance of a contract.
22. **TERMINATION FOR CAUSE.** The Auditor General may terminate this contract for cause, in whole or in part, if the contractor, as determined by the Auditor General: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this contract will not be construed to mean that other breaches are not material.

If the Auditor General terminates this contract under this section, the Auditor General will issue a termination notice specifying whether the contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that the contractor was not in breach of the contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 23, Termination for Convenience.

The Authority will only pay for amounts due to the contractor for contract activities accepted by the Auditor General on or before the date of termination, subject to the Auditor General's right to set off any amounts owed by the contractor for the Auditor General's reasonable costs in terminating this contract. The contractor must pay all reasonable costs incurred by the Auditor General in terminating this contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the Auditor General incurs to procure the contract activities from other sources.

23. **TERMINATION FOR CONVENIENCE.** The performance of work under this contract may be terminated by the Auditor General in accordance with this clause either in whole or in part, without penalty and for any reason, whenever the Auditor General shall determine that such termination is in the best interest of the Authority or when funds are not available from an appropriation for this purpose. The Authority shall pay the contractor: (a) compensation for services

performed prior to the date of termination, and (b) all reasonable expenses incurred by the contractor prior to such date of termination, provided that funds have been appropriated for said purposes. The Auditor General will advise the Authority prior to terminating the contract under this section.

24. **GENERAL INDEMNIFICATION.** The contractor must defend indemnify and hold the State, its departments, authorities, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by the contractor (or any of the contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by the contractor (or any of the contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of the contractor (or any of the contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify the contractor in writing if indemnification is sought; however, failure to do so will not relieve the contractor, except to the extent that the contractor is materially prejudiced. The contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. The contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

25. **INFRINGEMENT REMEDIES.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by the contractor or its

subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, the contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to the contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against the contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

26. **LIMITATION OF LIABILITY.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

27. **DISCLOSURE OF LITIGATION OR OTHER PROCEEDING.** The contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving the contractor, a subcontractor, or an officer or director of the contractor or subcontractor, that arises during the term of the contract, including: (a) a criminal Proceeding; (b) a parole or probation proceeding; (c) a proceeding under the Sarbanes-Oxley Act; (d) a civil proceeding involving: (1) a claim that might reasonably be expected to adversely affect the contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a proceeding involving any license that the contractor is required to possess in order to perform under this contract.

28. **STATE DATA.**

a. Ownership. The State's data ("State Data," which will be treated by the contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the contract activities; (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the contract activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("PHI") collected, used, processed, stored, or generated as the result of the contract activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This section survives the termination of this contract.

b. Contractor Use of State Data. The contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate

and consistent with its obligations as further described in this contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the contract activities, such use and disclosure being in accordance with this contract, any applicable statement of work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for the contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This section survives the termination of this contract.

- c. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by the contractor that relate to the protection of the security, confidentiality, or integrity of State Data, the contractor must, as applicable: (a) notify the State (Authority and Auditor General) as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting the contractor's obligations of indemnification as further described in this contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures the contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of the contractor's representative; a description of the nature of the loss; a list of the types of data involved;

the known or approximate date of the loss; how such loss may affect the affected individual; what steps the contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by the contractor. This section survives the termination of this contract.

**29. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this section survive the termination of this contract.

- a. Meaning of Confidential Information. For the purposes of this contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- d. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this contract or to use such Confidential Information for any purposes whatsoever other than the performance of this contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's

responsibilities; and (c) The contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of the contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this section. This section is not intended to prevent or restrict access to information necessary for the completion of any external peer reviews of the contractor as required by applicable auditing standards.

- e. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- f. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this contract or any statement of work corresponding to the breach or threatened breach.
- g. Surrender of Confidential Information upon Termination. Upon termination of this contract or a statement of work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that the contractor must return State Data to the State following the timeframe and procedure described further in this contract. Should the contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

### **30. DATA PRIVACY AND INFORMATION SECURITY.**

- a. Undertaking by Contractor. Without limiting the contractor's obligation of confidentiality as further described, the contractor is responsible for

establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of the contractor, if any, comply with all of the foregoing.

- b. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review the contractor's data privacy and information security program prior to the commencement of contract activities and from time to time during the term of this contract. During the providing of the contract activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of the contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, the contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding the contractor's data privacy and information security program.
- c. Audit Findings. The contractor must implement any required safeguards as identified by the State or by any audit of the contractor's data privacy and information security program.
- d. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this contract without limitation and without liability if the State determines that the contractor fails or has failed to meet its obligations under this section.

**31. CONFLICTS AND ETHICS.** The contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for the contractor, any consideration contingent upon the award of the contract. The contractor must immediately notify the State of any violation or potential violation of these standards. This section applies to the contractor, any parent, affiliate, or subsidiary organization of the contractor, and any subcontractor that performs contract activities in connection with this contract.

**32. NONDISCRIMINATION.** The contractor shall comply with all applicable federal and State laws, rules, and regulations that prohibit contractors and any subcontractors from discriminating against employees or applicants for

employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, on the basis of race, color, creed, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this contract. The contractor will continue its commitment to an affirmative action plan in staffing practices.

33. **CONTRACTOR'S LIABILITY INSURANCE.** The contractor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the contractor's operations under the contract, whether such operations be by the contractor or by anyone directly or indirectly employed by the contractor or by anyone for whose acts the contractor may be liable:

The contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from the contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type		Additional Requirements	
Commercial General Liability Insurance			
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations		Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.	
Umbrella or Excess Liability Insurance			
<u>Minimal Limits:</u> \$3,000,000 General Aggregate		Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.	
Motor Vehicle Insurance			
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence			
Workers' Compensation Insurance			
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.		Waiver of subrogation, except where waiver is prohibited by law.	



<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	

If the contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of the contractor to any indemnified party or other persons.

The contractor must: (a) provide insurance certificates to the Office of the Auditor General, containing the agreement or purchase order number, at contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this section; (c) notify the Office of the Auditor General within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

Before starting the work, the contractor must furnish to the Office of the Auditor General certificate(s) of insurance verifying liability coverage. The contract must be acknowledged on the certificate of insurance to ensure correct filing. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least fifteen days after written notice making reference to the contract has been given to the Auditor General.

- 34. COMPLIANCE WITH LAWS AND REGULATIONS.** The contractor shall comply with all federal, State, and local laws, ordinances, rules, and regulations applicable to its activities and obligations under this contract.

In WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized representatives.

Office of the Auditor General

\_\_\_\_\_, CPA, CIA  
Auditor General

\_\_\_\_\_  
Date

Plante Moran, PLLC

\_\_\_\_\_, CPA  
Partner

\_\_\_\_\_  
Date

Michigan State Housing Development Authority

*For*  
\_\_\_\_\_  
Kevin Elsenheimer  
Executive Director

*9.23.15*  
\_\_\_\_\_  
Date